

FILED

BEFORE THE

DEPARTMENT OF REAL ESTATE

NOV 15 2007

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

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In the Matter of the Accusation of )  
JOSE L. BARRIONUEVO, )  
PEDRO PASCUAL MEJIA and )  
UNION CITY MORTGAGE CO., )  
Respondents. )

NO. H-9264 SF

OAH NO. N-2005060755

DECISION

The Proposed Decision dated October 26, 2007, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter with the following correction and exception:

1. The reference to "section 10132" appearing on the fifth line of Paragraph "4" on Page 3 of the Factual Findings within the Proposed Decision is amended to refer to "section 10131".

2. Paragraph "2" of the Order of the Proposed Decision is not adopted and shall not be part of the Decision.

This Decision shall become effective at 12 o'clock noon  
on DEC - 6 2007.

IT IS SO ORDERED

JEFF DAVI  
Real Estate Commissioner

11-13-07

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of

JOSE L. BARRIONUEVO,  
PEDRO PASCUAL MEJIA and  
UNION CITY MORTGAGE CO.,

Respondents.

Case No. H-9264 SF

OAH No. N2005060755

**PROPOSED DECISION**

On September 13, 2007, and September 28, 2007, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David B. Seals, Counsel, represented Complainant E. J. Haberer II, Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Raul S. Picardo, Attorney at Law, 251 Post Street, Suite 525, San Francisco, California 94108, represented Respondent Jose L. Barrionuevo, who was present during all phases of the hearing. Mr. Pedro Pascual Mejia appeared at the hearing of this matter on behalf of Union City Mortgage Co., Inc., as well as himself, but neither he nor Union City Mortgage Co., Inc., was otherwise represented.

On September 28, 2007, the parties submitted the matter and the record closed.

**FACTUAL FINDINGS**

1. On May 26, 2005, Complainant E. J. Haberer II (Complainant), a Deputy Real Estate Commissioner of the State of California, in his official capacity, made the Accusation against Respondent Jose L. Barrionuevo, Respondent Pedro Pascual Mejia

and Respondent Union City Mortgage Co., Inc. The Department filed the Accusation on June 2, 2005.<sup>1</sup>

*Pedro Pascual Mejia*

2. Respondent Pedro Pascual Mejia (Respondent Mejia) is presently licensed and has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code).

On an unknown date before January 1, 2002, the Commissioner issued Respondent Mejia a real estate broker license (number 00575618). (Respondent Mejia proclaimed that he has been a Department licensee since 1976 when he became a salesperson. In 1978 he claimed that he acquired a real estate broker license.) For a number of years, he has maintained a main office at 30545 Union City Boulevard, Union City, California, and conducted business under two fictitious business names: Tri Valley Realty and Union City Mortgage Co., Inc. On February 9, 2004, Respondent Mejia opened a branch office at 1500 Sycamore Avenue, Hercules, California.

On January 1, 2002, the Department licensed Respondent Mejia as the designated officer for Union City Mortgage Co., Inc., which had a main office at 30547 Union City Boulevard, Union City, California.

On March 2, 2004, the Department cancelled the fictitious name of Tri Valley Realty as associated with the license issued to Respondent Mejia. And on July 21, 2004, the Department added the fictitious business name Re/Max Tri-Valley.

Respondent Mejia's designated officer status expired on February 9, 2006.

On September 28, 2007, which was the second day for the hearing of this matter, Respondent Mejia signed a declaration whereby he petitioned to voluntarily surrender the licenses issued in his name. But, Complainant did not stipulate to withdraw the accusation against any respondent.

*Union City Mortgage Co., Inc.*

3. Before January 1, 2002, the Commissioner originally issued corporate broker license number 01172895 to Union City Mortgage Co., Inc. (Respondent Union City Mortgage) with the designated officer-responsible individual broker being Pedro Pascual Mejia.

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<sup>1</sup> The matter was originally set for hearing in September 2005. The matter was taken off the OAH hearing calendar on August 8, 2005. A Second Amended Notice of Hearing, dated May 16, 2007, set the matter for hearing that commenced on September 13, 2007.

Department records show the initial main office and mailing address for Respondent Union City Mortgage, 30547 Union City Boulevard, Union City, California 94587. On August 29, 2003, branch licenses were issued for addresses of: 955 West Center Street, Suite 283, Manteca, California 95337, and 4700 Northgate Boulevard, Suite 120, Sacramento, California 95834. On July 21, 2004, a fictitious business name of Re/Max Tri-Valley was added to the license issued to Respondent Union City Mortgage. On February 9, 2006, the license issued to Respondent Union City Mortgage and the designated officer status of Respondent Mejia expired.

4. During various periods of time pertinent to the following matters, Respondent Union City Mortgage, through its designated officer, agents and employees, engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of California, within the meaning of Business and Professions Code section ~~10132~~<sup>10131</sup>, subdivision (d), by soliciting borrowers or lenders for or negotiating loans or collecting payments or performing services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

*Respondent Barrionuevo*

5. On June 17, 2003, the Department issued real estate salesperson license number 01372238 to Respondent Barrionuevo.

6. When first licensed in mid-June 2003, Respondent Barrionuevo had as his employing broker Respondent Mejia.

On September 15, 2003, the Department's records were amended to show Respondent Barrionuevo had changed his employing broker to Raul Alcaez of Hayward, California. Later, the Department's records again were altered to reflect that as of November 15, 2004, Respondent Barrionuevo had a new employing broker in the person of Eduardo B. Mendoza.

Complainant offered the Department's license certificate, dated August 18, 2005, that showed the real estate salesperson license issued to Respondent Barrionuevo expired on June 16, 2007.

*Auditor's Findings and Conclusions Regarding Respondent Mejia and the Corporate Respondent*

7. Over the course of two months beginning on March 23, 2004, and ending on May 25, 2004, on an intermittent basis, Department auditor Michael J. Rivera (Auditor Rivera) performed an examination of the real estate sales files, real estate sales listing files, commission checks paid by the broker and copies of real estate licenses and broker-salesperson agreements as maintained by Respondent Mejia, who had conducted business

under the fictitious business name of Tri Valley Realty and Respondent Union City Mortgage. Also, the Department's auditor examined distinct records of the corporate broker, Respondent Union City Mortgage. Auditor Rivera conducted the audit examination of records of Respondent Mejia and Respondent Union City Mortgage in Union City, California, at the principal offices of the licensed corporate broker and individual broker.

Auditor Rivera selected the time span of June 1, 2002, through December 31, 2003, as the period he examined the accounting records and other records of Respondent Union City Mortgage for which Respondent Mejia acted as designated officer-responsible individual broker. Among other purposes, the objective of the auditor's examination was to ascertain whether trust funds under the control of the individual broker and the real estate corporation had been handled and accounted for in accordance with the California Real Estate Law and the Commissioner's Regulations.

8. During the audit examination, for the most part, Auditor Rivera met with Respondent Mejia to gain explanations to questions that arose during the course of the audit of the records and operations of a supposed licensed real estate corporation.

9. On May 28, 2004, Auditor Rivera issued audit reports, which were reviewed and approved by Supervising Auditor Daniel J. Sandri.

a. The Audit Report No. OK 03-0076, which pertained to Respondent Mejia, contained sections titled "audit scope," "background," "findings," and "conclusions." That audit report was reasonable and sound.

In the finding and conclusions portions of the audit report, which pertained to Respondent Mejia, the auditor noted six deficiencies as follows:

- i. Respondent Mejia made an admission to the auditor that the broker did not maintain trust accounts. However, during the subject audited period, Respondent Mejia received trust funds. In the matter of residential sales transactions, Respondent Mejia accepted from buyers earnest money deposits that were made payable to an escrow company.
- ii. A transaction for the purchase by Jose and Maricruz Mejia (who were not related to Respondent Mejia) of a house in San Leandro spanned the period of July 2002 to a closing date on August 22, 2002. A financial institution's loan for the purchase was secured for the buyers, Jose and Maricruz Mejia. Also, the auditor found that a sellers' carry-back loan under a second deed of trust was negotiated for nearly \$18,000, and that the debt instrument was not disclosed by the broker or his agents or employees to the buyers, namely Jose and Maricruz Mejia.

Even though he did not possess a valid real estate salesperson license, for the transaction that closed in August 2002, Respondent Barrionuevo received compensation of \$6,431.74 for the sales transaction, as well as \$8,623.74 for the loan aspect of the transaction that pertained to Mr. and Mrs. Mejia. Also worksheets showed Respondent Barrionuevo as an "agent" and that the compensation paid to him was characterized as a "commission." Respondent Barrionuevo was not licensed until mid-June 2003. In light of the independent investigation of the Auditor, his trustworthy evidence is supplemented and explained<sup>2</sup> by written statements of Jose and Maricruz Mejia that Respondent Barrionuevo held himself out as a real estate salesperson and that he represented the couple in their efforts to purchase a house in San Leandro and further that Respondent Barrionuevo aided Jose and Maricruz Mejia to secure a mortgage loan to finance the purchase.

- iii. Respondent Mejia failed to maintain "a record" of trust funds received. The licensed broker did not place money received into a trust when he handled earnest money deposits that were collected from prospective buyers.
- iv. By way of the fictitious business name of "Re/Max Tri Valley Realty" for the audited period of June 1, 2002, to December 31, 2003, Respondent Mejia engaged in activity for which a real estate license was required. But Respondent Mejia had failed to register that name with the Department. At the time Respondent did have a fictitious business name of "Tri Valley Realty," but such name failed to include the affiliation designation of "Re/Max." Respondent Mejia improperly used the name "Re/Max Tri Valley Realty" on sales contracts, letterhead stationery, and on signage at the front of the main office in Union City.
- v. For the period covered by the audit, Respondent Mejia employed 21 individual salespersons. But he failed to maintain at the principal office of the broker copies of the current license certificates for 11 of the salespersons.
- vi. For the period covered by the audit, Respondent Mejia failed to maintain at the main office of the broker broker-salesperson agreements for three of the salespersons employed by the broker. And four broker-salesperson agreements were not signed by salespersons employed by Respondent Mejia.

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<sup>2</sup> Government Code section 11513, subdivision (d).

b. The Audit Report No. OK 03-0077, which pertained to Respondent Union City Mortgage, with Respondent Mejia as the designated officer, contained sections titled "audit scope," "background," "findings," and "conclusions." That audit report was reasonable and sound.

In the finding and conclusions portions of the audit report, which pertained to Respondent Mejia, the auditor noted three deficiencies as follows:

- i. Respondent Mejia made an admission that Respondent Union City Mortgage did not maintain a trust account. In mortgage loan transactions, agents and employees of the corporate broker did not collect in advance any credit and appraisal fees. In some instances, credit report fees were collected from the clients of the corporate broker at the closing of borrowers' loans as a reimbursement to the corporate broker even though the credit report issuing company had been paid before the broker collected the fees.
- ii. Respondent Union City Mortgage compensated salespersons to perform licensed activities under the corporate broker's license at times when such salespersons were employed by another real estate broker.
- iii. Respondent Union City Mortgage failed to provide borrowers with Mortgage Loan Disclosure Statements (MLDS) in, at least, four transactions. Respondent did present the affected borrowers with a "Good Faith Estimate"; however, the latter document failed to include the real estate broker's license number and the requisite statement: "... 'good faith estimate' does not constitute a loan commitment."

*Consumers Mary Leon and Karina Sieg against Respondents*

10. Ms. Mary Leon offered credible and compelling evidence at the hearing of this matter.

Respondent Barrionuevo is the brother-in-law to Ms. Leon.

In 2001, Ms. Leon's sister, who is married to Respondent Barrionuevo, told Ms. Leon that Respondent Barrionuevo held a real estate salesperson license. (In fact, he did not hold such license.) At that time in 2001, Ms. Leon understood from her sister's comments that Respondent worked in the real estate office owned by "Pete Mejia."

At a meeting, Ms. Leon confided in Respondent Barrionuevo that she did not have good credit to buy a house. Ms. Leon heard Respondent Barrionuevo represent that

she did not need to worry because he could effect the purchase of a house by Ms. Leon using the credit worthiness of her daughter, Ms. Karina Sieg.

Respondent Barrionuevo was integral to the August 2001 purchase of a house by Ms. Leon, her husband and Ms. Sieg.

In mid-2002, Ms. Leon decided to sell the house on West Street in Hayward. She asked Respondent Barrionuevo to act as the sellers' agent. Respondent Barrionuevo agreed to act as the sellers' agent and he performed services of a real estate salesperson, such as bringing prospective buyers to view the house and to negotiate the sale price for the house. In 2002, Ms. Leon met with Respondent Barrionuevo at her personal residence. Respondent made representations to Ms. Leon that he could sell her house in Hayward and that she would earn a gross profit on the sale in the amount of \$40,000. On December 24, 2002, Respondent Barrionuevo came to a Christmas party at the West Street, Hayward house of Ms. Leon, who asked about documents for the closing of an apparent sales transaction. Ms. Leon was concerned about the closing documents because she and her family had a pre-paid trip to Peru beginning on December 26. During the conversation on December 24, 2002, Ms. Leon heard Respondent express that he did not have the documents but that he would probably have closing documents available on her return from her trip. On Ms. Leon's return to the area on January 7, 2003, she discovered that the house was occupied by strangers, who Ms. Leon heard state Respondent Barrionuevo had given them the house keys upon the closing of the sales transaction.

Also, Respondent Barrionuevo represented Ms. Leon regarding the purchase in October 2002 of another house on Bristlecone Court in Union City.

11. Ms. Karina Sieg offered credible and persuasive evidence at the hearing of this matter. Ms. Sieg is the adult daughter of Ms. Mary Leon.

Ms. Sieg was a co-owner of a house on West Street in Hayward.

In mid-2002, Ms. Sieg and her mother, Ms. Leon, decided to sell the house in Hayward. Ms. Sieg understood that Respondent Barrionuevo was the principal seller's agent for the transaction that pertained to the sale of the house on West Street in Hayward. She knew that "ReMax" was the broker with whom Respondent Barrionuevo was associated.

After she and her mother returned from a trip to Peru that ended in early January 2003, Ms. Sieg was surprised to learn that the sales transaction had closed.

Ms. Sieg never signed the documents to conclude the sales transaction. She understood that someone engaged in a forgery of her signature, as well as the signature



of the husband of Ms. Sieg, upon documents that completed an authorized sales transaction.

After she filed a written consumer complaint with the Department in June 2004, Ms. Sieg learned that Respondent Barrionuevo was not licensed to act as a real estate salesperson for the December 2002 transaction that involved the sale of the West Street, Hayward house.

*Unlawful Acts of Respondent Mejia*

12. Under his individual broker license Respondent Mejia employed, at least, four real estate salespersons named: Emmanuel Caolie, Mehr Omar, Mohinder Singh and Marie Torres. Over the same period of time of employing those salespersons under his individual broker license, Respondent Mejia allowed Respondent Union City Mortgage to compensate all of the salespersons for the provision of services for which a real estate license is required.

Respondent Mejia's acts or omissions that allowed, at least, four real estate salespersons to be compensated by two brokers involved negligence and incompetence.

13. On August 22, 2004, as the responsible broker for Respondent Union City Mortgage, Respondent Mejia attended to the closing of the transaction for the sale of a house on Juniper Street in San Leandro to a married couple, that is Jose and Maricruz Mejia. The settlement statement did not show a second deed of trust in the amount of \$17,997.50, which was a debt that was not disclosed to the buyers. Additionally, Respondent Mejia did not fully disclose the note that secured the second deed of trust, and he failed to timely record the deed of trust. Also, Respondent Mejia failed to deliver into the possession of the buyers a conforming copy of the deed of trust.

The failure of Respondent Mejia to accurately communicate with Jose and Maricruz Mejia that they were entering into a debt, which was embodied in a second deed of trust for the Juniper Street transaction, involved negligence or incompetence.

14. At least from July 2002 through August 22, 2002, Respondent Mejia retained Respondent Barrionuevo to negotiate the purchase of real property and to aid in securing a mortgage loan for a transaction that pertained to a house in San Leandro that was purchased by a couple named Jose and Maricruz Mejia. Respondent Mejia assured that Respondent Barrionuevo, who at that time was not a licensed real estate salesperson, was compensated for the provision of acts or services for which a real estate salesperson license was required.

Respondent Mejia's use of the services of Respondent Barrionuevo in the transaction that pertained to Jose and Maricruz Mejia involved such conscious disregard of the Real Estate License Law as to constitute fraud or dishonest dealings.

15. During the period of June 1, 2002 to December 31, 2003, Respondent Mejia received trust funds in the form of checks. But Respondent Mejia failed to maintain a record for those trust funds that had been received. And the money as received by Respondent Mejia was not placed into a trust account.

Respondent Mejia's failure to maintain a record of trust funds for trust money received by him in the capacity of a real estate broker involved negligence and incompetence.

16. During the period of June 1, 2002, to December 31, 2003, Respondent Mejia performed real estate transactions and activities under the fictitious business name of "Re/Max Tri Valley Realty" without first having filed or registered that name with the Department. For the subject period of time, Respondent Mejia never petitioned the Department to issue a license certification that reflected the name of "Re/Max Tri Valley Realty."

Respondent Mejia's failure to properly file or register with the Department the fictitious business name used by him in conducting real estate transactions involved negligence and incompetence.

17. During the period of June 1, 2002, to December 31, 2003, Respondent Mejia failed to maintain at his primary place of business, and he failed to produce for inspection by the Department, copies of license certificates for eleven salespersons who were employed by the subject real estate broker.

Respondent Mejia's failure to maintain at his primary place of business copies of license certificates for certain salespersons involved negligence and incompetence.

18. During the period of June 1, 2002 to December 31, 2003, Respondent Mejia failed to maintain at his primary place of business copies of broker-salesperson agreements for seven salespersons who were employed by the subject real estate broker.

Respondent Mejia's failure to maintain copies of broker-salesperson agreements for certain salespersons involved negligence and incompetence.

19. During the time material to the matters mentioned herein, Respondent Mejia failed to exercise reasonable supervision over the activities of Respondent Union City Mortgage. Respondent Mejia permitted, ratified and/or caused the unprofessional conduct that is described herein. And Respondent Mejia failed to reasonably or adequately review, oversee, inspect and manage Respondent Union City Mortgage's salespersons. Respondent Mejia failed to establish reasonable policies, rules, procedures and systems for the review, oversight, inspection and management of salespersons associated with Respondent Union City Mortgage.

20. Respondent Mejia's failure to exercise reasonable supervision of activities within the scope of professional endeavors at the premises of Respondent Union City Mortgage involved negligence and incompetence.

*Unlawful Acts and Omissions Regarding Respondent Barrionuevo*

21. During the period of June 1, 2002 to December 31, 2003, Respondent Barrionuevo negotiated the purchase of real property and aided in securing a mortgage loan for a transaction that pertained to a house in San Leandro that was purchased by a couple named Jose and Maricruz Mejia. When Respondent Barrionuevo was not licensed, Respondent Mejia assured that Respondent Barrionuevo was compensated for the provision of acts or services for which a real estate salesperson license was required.

Also, Respondent Barrionuevo acted as a real estate salesperson and unlawfully represented the interests of his in-laws, namely Ms. Leon.

22. Respondent Barrionuevo's participation in transactions that involved Ms. Leon and Ms. Sieg involved fraud or dishonest dealings.

*Unlawful Acts of Respondent Union City Mortgage*

23. During the period of June 1, 2002 to December 31, 2003, which reflected a span of time for which it was audited by the Department, Respondent Union City Mortgage, through its officer, agents and employees, failed to include its corporate broker license number, as well as a conspicuous statement on the face of the documents important to the closing of real estate transactions that set out, in part, that: " 'good faith estimate' does not constitute a loan commitment. . . ," on mortgage disclosure statement forms as presented to certain borrowers.

24. The acts and omissions of Respondent Mejia and Respondent Barrionuevo are imputed to Respondent Union City Mortgage.

25. During the period of the audit as conducted by Auditor Rivera, Respondent Barrionuevo engaged in acts as a real estate salesperson<sup>3</sup> in matters that required him to possess a license issued by the Department.

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<sup>3</sup> Business and Professions Code section 10131, subdivision (a), provides, "A real estate [professional] within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others: . . . [s]ells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity. . . ."

### *Matters in Mitigation and Extenuation*

26. Since 1976 Respondent Mejia has held a license to serve as a real estate broker. He has owned a broker's office under various names over the past nearly thirty years. Respondent Mejia has been the sole shareholder of the corporate broker and he has acted as a president of the corporations.

27. Except for the current accusation, over the past thirty years, Respondent Mejia has not been the subject of disciplinary action by the Department of Real Estate.

28. Complainant offered no competent evidence to show that Respondent Mejia unreasonably or unlawfully used trust fund money as his personal use or as the money of Respondent Union City Mortgage.

29. At the time of the hearing in this matter, Respondent Mejia employed about thirty (30) real estate salespersons in offices owned or operated by him. But only a few of those licensees were actively engaged in the real estate profession, which involved about six or seven agents involved in mortgage transactions. Respondent Mejia represented that about 75 percent of the salespersons are part-time employees, while 25 percent of the agents were full-time employees.

30. Respondent Barrionuevo is a licensee of the Department of Insurance. When he met Respondent Mejia, Respondent Barrionuevo conducted his insurance business from an office in San Leandro, which was about three or four miles from the office of Mr. Mejia. As an insurance agent beginning in early 2002, he often sent clients to the real estate broker's office as owned and operated by Respondent Mejia.

31. Between 2001 and mid 2003, Respondent took the Department's examination for licensure. He failed the test three times. In January or February 2003, he passed the licensure examination; however, he did not secure a certificate of licensure because a criminal background check incorrectly determined that he was a felon due to someone's improper use of the social security number previously issued to Respondent Barrionuevo. After his identity was verified, he secured a salesperson license in June 2003, which was about six months after he had received results for his success with the examination.

### *Matters in Aggravation*

32. Respondent Mejia was not believable when he asserted that during the period of the audit as conducted by Auditor Rivera that Respondent Barrionuevo was not employed by him to provide services for which a real estate salesperson license was required.

Respondent Mejia was not credible when he asserted at the hearing that he thoroughly explained to potential house buyers, namely Jose and Maricruz Mejia, that they were incurring a second deed of trust that secured a loan made by house sellers so as to partially finance five percent of the down payment on the purchase price. Respondent Mejia, who is of Filipino ethnicity and does not speak Spanish, unpersuasively conveyed that Respondent Barrionuevo, using Spanish, informed the house buyers of the debt that related to a second deed of trust.

Respondent Mejia was not truthful and candid in asserting that the complaint of Ms. Mary Leon was not accurate. The real estate broker relayed that the sales documents had been signed when returned to his office by Respondent Barrionuevo that indicated to him that Ms. Leon and her husband had given authorization for the closing of the transaction that sold their house.

Respondent Mejia was not believable that he did not have any knowledge, and could not have gained knowledge, that Ms. Leon and her husband, as sellers of a house, did not wish to close the sales transaction.

Respondent Mejia was not candid at the hearing when he asserted that the money paid by his broker's office in August 2002 to Respondent Barrionuevo was a "referral fee" on the sale of the Juniper Street house in San Leandro rather than a "commission" to the unlicensed salesperson for services rendered of a real estate agent. In fact, the money paid to Respondent Barrionuevo amounted to 80 percent of the proceeds to the broker's office at a time when Respondent Barrionuevo was not a licensed real estate salesperson. Respondent Mejia issued checks to Respondent Barrionuevo in excess of \$15,000 for the unlicensed salesperson's participation in the transaction that involved Jose and Maricruz Mejia.

33. The wrongful acts and omissions of Respondent Mejia did not constitute "a simple mistake." Rather the unlawful conduct shown by the evidence established Respondent Mejia substantially departed from the standards expected of a licensed real estate broker, who is the designated officer-broker of a real estate corporation.

34. By his demeanor while testifying, his exaggerated assertions that were inconsistent with more credible evidence, and his attitude towards the proceeding, Respondent Barrionuevo was not a credible<sup>4</sup> witness in many aspects of his testimony.

Respondent Barrionuevo was not credible that the only service that he performed for Respondent Mejia was to act as a Spanish-English interpreter, and that he merely referred potential real estate clients to Respondent Mejia.

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<sup>4</sup> Government Code section 11425.50, subdivision (b), third sentence.

Respondent Barrionuevo was not believable that he did not act in late 2002 as a real estate salesperson in transactions for the sale of the house that was owned by Ms. Leon and her daughter, Ms. Sieg. Respondent Barrionuevo did not truthfully state at the hearing of this matter that his only involvement with the sale in 2002 of the house of Ms. Leon and Ms. Sieg was to approach Respondent Mejia to lower the broker's fee in order for the sellers to realize greater earnings on the sale. But he contradicted himself by his assertions under oath that he was aware of the listing agreement, which had been prepared solely by Respondent Mejia.

The respondent salesperson was also not believable when he claimed that the first time that he heard about Ms. Leon's distress with the sale of the West Street house in Hayward was at a point about two years after the transaction concluded. It was implausible that Respondent Barrionuevo only learned of Ms. Leon's objections only after the complaint was filed with the Department by Ms. Sieg.

Respondent Barrionuevo was not credible that whenever he sent clients to the broker office of Respondent Mejia that the unlicensed salesperson would only receive a referral fee from Respondent Mejia. Respondent Barrionuevo offered an unpersuasive explanation for the \$15,000 in income that he earned on the transaction and mortgage placement on the Juniper Street property that involved Jose and Maricruz Mejia. He was not able to explain the basis for a referral fee from the broker to represent 70 percent to 80 percent of the income earned by the broker's office on the transaction.

#### *Other Matters*

35. Respondent Mejia did not call as a witness any other licensed brokers or current salespersons in his office to offer evidence regarding Respondent Mejia's business ethics, professionalism or commitment to the real estate laws of this state.

36. It would be against the public interest to permit Respondent Union City Mortgage to maintain a license and licensing rights as a corporate real estate broker.

37. It would be against the public interest to permit Respondent Mejia to maintain a real estate broker license.

38. Since ending his employment relationship with Respondent Mejia, Respondent Barrionuevo became associated with two successive brokers. Respondent Barrionuevo called as a witness neither of the brokers with whom he has been associated with since September 2003.

Respondent Barrionuevo called no one to offer evidence regarding his reputation in the community for honesty, truthfulness and integrity.

39. It would be against the public interest to permit Respondent Barrionuevo to maintain a real estate salesperson license.

## LEGAL CONCLUSIONS

### *The Standard of Proof*

1. The standard of proof in an administrative disciplinary action that seeks the suspension or revocation of a real estate professional's license is "clear and convincing evidence to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 583.)

"Clear and convincing evidence" means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered. "Clear and convincing evidence" is a higher standard of proof than proof by "a preponderance of the evidence." (*BAJI*<sup>5</sup> No. 2.62 (8th Ed.), p. 55.) "Clear and convincing evidence" requires a finding of high probability for the propositions advanced in an accusation against a targeted licensee. It must be so clear as to leave no substantial doubt and to command the unhesitating assent of every reasonable mind. (*In re Michael G.* (1998) 63 Cal.App.4th 700.)

Complainant established by clear and convincing evidence the legal conclusions below upon which disciplinary action is imposed upon respondents herein.

### *Nondelegable Duties*

2. Respondent Mejia attempted to deny responsibility for the failures, omissions and neglect of the agents, shareholders, officers and associates of Respondent Union City Mortgage. Respondent Mejia contends that he should not be held culpable for the malfeasance or misconduct of Respondent Barrionuevo or others associated with the corporate broker. Respondent Mejia advances that the misfeasance or malfeasance of those other actors were independent of his functions as a real estate broker. But, Respondent Mejia's arguments are in error in his perceptions that he is not responsible for the acts of agents and employees of Respondent Union City Mortgage.

Respondent Mejia's defense must be viewed in light of the well-established rule of nondelegable duties of a licensee. The rule, which is similar to the rule of *respondeat superior*, advances that "the licensee, if he elects to operate his business through employees, must be responsible to the licensing authority for their conduct in the exercise of his license." (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 295.) "By virtue of the ownership of a . . .

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<sup>5</sup> *Book of Approved Jury Instruction, Standard Jury Instructions, Civil.*

license such owner has a responsibility to see to it that the license is not used in violation of law.” (*Ford Dealers Assn. v. Dept. of Motor Vehicles* (1982) 32 Cal.3d 347, 360.)

In citing Civil Code section 2330, the court in the *Ford Dealers Association* case commented that: “The settled rule that licensees can be held liable for the acts of their employees comports with the general rule governing principal-agent liability. ‘An agent represents his principal for all purposes within the scope of his actual or ostensible authority.’ (Civil Code section 2330.)” (*Ford Dealers Assn. v. DMV, supra*, 32 Cal.3d at p. 360.)

The rule of nondelegable duties of licensees is of common law derivation. (*California Assn. of Health Facilities v. DHS* 16 Cal.4th, *supra*, at p. 2961; *Van Arsdale v. Hollinger* (1968) 68 Cal.2d 245, 251.) The essential justification for the rule is to ensure accountability of licensees so as to safeguard the public health, safety or welfare.

More importantly, if a licensee, such as Respondent Mejia, were not liable for the acts and omissions of their agents and independent contractors, “effective regulation would be impossible. [The licensee] could contract away the daily operations of his business to independent contractors and become immune to disciplinary action by the licensing authority.” (*California Assn. of Health Facilities v. DHS, supra*, 16 Cal.4th at p. 296.) Such result would undermine effective law enforcement and regulatory oversight.

And, the concept that a licensee will be held liable for the acts of agents is one that has been applied to situations where the agent is an independent contractor or is an employee. (See *Banks v. Board of Pharmacy* (1984) 161 Cal.App.3d 708, 713; *Rob-Mac, Inc. v. Dept. of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797-798.)

Respondent Mejia must bear full responsibility for the acts and omissions of agents or employees of Respondent Union City Mortgage, a licensed real estate corporation for which Respondent Mejia assumed the role of licensed designated officer-broker. When unlicensed, Respondent Barrionuevo performed services customarily associated with the functions, duties and obligations of a real estate salesperson engaged in resale of family residential real estate. Respondent Mejia was obligated to supervise and control the activities and functions of the individuals associated with the real estate corporation—Respondent Union City Mortgage.

#### *Statutory Authority - Violations of the Real Estate Law and Commissioner's Regulations*

3. Business and Professions Code section 10177, subdivision (d), establishes that the Department of Real Estate Commissioner may suspend or revoke the license of a real estate licensee who has . . . , or may suspend or revoke the license of a corporation . . . if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has . . . [w]illfully disregarded or violated the Real Estate Law . . . or the rules and



regulations of the commissioner for the administration and enforcement of the Real Estate Law. . . .”

The concept of “willful” is given broad meaning in the realm of administrative licensure disciplinary proceedings. “Willful” does not imply a malicious intent to do wrong or a consciousness for malfeasance on the part of a licensee to violate a rule, statute or standard of due care. The term “ ‘willful’ . . . does not necessarily imply anything blamable, or any malice or wrong toward the other party, or perverseness or moral delinquency, but merely that the thing done or omitted to be done was done or omitted intentionally. It amounts to nothing more than this: that the person knows what he is doing, intends to do what he is doing, and is a free agent. . . .” (*Suman v. BMW of North America, Inc.* (1994) 23 Cal.App.4th 1, 12; (See also: *Apollo Estates, Inc. v. Department of Real Estate* (1985) 174 Cal.App.3d 625, 639; *Milner v. Fox* (1980) 102 Cal.App.3d 567, 573-575, fn. 9, and *Murrill v. State Board of Accountancy* (1950) 97 Cal.App.2d 709, 713.)

*Respondent Mejia*

4. Business and Professions Code section 10137 sets out, in part, that “[i]t is unlawful for any licensed real estate broker to employ or compensate . . . any person for performing any of the acts within the scope of this chapter who is not a licensed real estate . . . salesperson. . . .”

Cause exists for disciplinary action against the license issued to Respondent Mejia under Business and Professions Code section 10137, in conjunction with section 10177, subdivision (d), by reason of the matters set forth in Factual Findings 9 through 12 and 14.

5. Business and Professions Code section 10177, subdivision (g), sets out that the commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation’s stock has demonstrated negligence or incompetence in performing any act for which he or she is required to hold a license.

Cause exists for disciplinary action against the license issued to Respondent Mejia under Business and Professions Code sections 10137 and 10177, subdivision (g), in conjunction with section 10177, subdivision (d), by reason of the matters set forth in Factual Findings 9 through 13.

6. Business and Professions Code section 10176, subdivision (i), sets out that the commissioner may, upon his own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or

acting in the capacity of a real estate licensee within this state, and he may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

Cause exists for disciplinary action against the license issued to Respondent Mejia under Business and Professions Code sections 10137 and 10176, subdivision (i), in conjunction with section 10177, subdivision (d), by reason of the matters set forth in Factual Finding 14.

7. Business and Professions Code section 10145, in part, sets forth:

(a)(1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

....

California Code of Regulations, title 10, section 2831, sets forth the regulation that pertains to trust fund records that must be maintained by a real estate broker. The regulatory provision provides:

(a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

(1) Date trust funds received.

(2) From whom trust funds received.

(3) Amount received.

(4) With respect to funds deposited in an account, date of said deposit.

(5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.

(6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.

(7) Daily balance of said account.

(b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).

(c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

....

Cause exists for disciplinary action against the license issued to Respondent Mejia under Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831, in conjunction with section 10177, subdivision (d), by reason of the matters set forth in Factual Finding 15.

8. California Code of Regulations, title 10, section 2725, sets out the Department's rules regarding broker supervision. The regulation prescribes, in pertinent part: "A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage: . . . transactions requiring a real estate license; . . . [d]ocuments which may have a material effect upon the rights or obligations of a party to the transaction . . . [r]egular and consistent reports of licensed activities of salespersons . . . [t]he form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices. . . . A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker."

Cause exists for disciplinary action against the license issued to Respondent Mejia under California Code of Regulations, title 10, section 2725, in conjunction with section 10177, subdivision (d), by reason of the matters set forth in Factual Findings 19, 23, 32 and 33.

9. California Code of Regulations, title 10, section 2726, sets out the regulation that governs a real estate broker's maintenance of "broker-salesperson relationship agreements." The regulation sets out that "[e]very real estate broker shall have a written agreement with each of his salesmen, whether licensed as a salesman or as a broker under a broker-salesman arrangement. The agreement shall be dated and signed by the parties and shall cover material aspects of the relationship between the parties, including supervision of licensed activities, duties and compensation."

Cause exists for disciplinary action against the license issued to Respondent Mejia under California Code of Regulations, title 10, section 2726, in conjunction with section 10177, subdivision (d), by reason of the matters set forth in Factual Finding 18.

10. Business and Professions Code section 10159.5 provides: "Every person applying for a license under this chapter who desires to have such license issued under a fictitious business name shall file with his application a certified copy of his fictitious business name statement filed with the county clerk. . . ."

California Code of Regulations, title 10, section 2731, sets out the Department regulation that pertains to use of a false or fictitious name by a licensed real estate broker. The regulation sets out, in part:

(a) A licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name.

(b) The Department shall issue a license required under the Real Estate Law only in the legal name of the licensee or in the fictitious business name of a broker who presents evidence of having complied with the provisions of Sections 17910 and 17917 of the Code.

....

Cause exists for disciplinary action against the license issued to Respondent Mejia under California Code of Regulations, title 10, section 2731, in conjunction with section 10177, subdivision (d), by reason of the matters set forth in Factual Finding 16.

11. Business and Professions Code section 10160 states that a real estate salesman license shall remain in the possession of the licensed real estate broker employer until canceled or until the salesman leaves the employ of the broker, and the broker shall make his license and the licenses of his salesman available for inspection by the commissioner or his designated representative.

Cause exists for disciplinary action against the license issued to Respondent Mejia under Business and Professions Code sections 10160, in conjunction with section 10177, subdivision (d), by reason of the matters set forth in Factual Finding 17.

*Respondent Union City Mortgage and Respondent Mejia*

12. Business and Professions Code section 10234 states:

(a) Except as provided in subdivision (d), every real estate licensee who negotiates a loan secured by a trust deed on real property shall cause the trust deed to be recorded, naming as beneficiary the lender or his or her nominee (who shall not be the licensee or the licensee's nominee), with the county recorder of the county in which the real property is located prior to the time that any funds are disbursed, except when the lender has given written authorization for prior release.

(b) If funds are released on the lender's written authorization as described in subdivision (a), the trust deed shall be recorded, or delivered to the lender or beneficiary with a written recommendation that it be recorded forthwith, within 10 days following release.

(c) Every real estate licensee who sells, exchanges, or negotiates the sale or exchange of a real property sales contract or a promissory note secured by a trust deed on real property shall cause a proper assignment of the real property sales contract or trust deed to be executed and shall cause the assignment to be recorded, naming as assignee the purchaser or his or her nominee (who shall not be the licensee or the licensee's nominee), with the county recorder of the county in which the real property is located within 10 working days after the licensee or seller receives any funds from the buyer or after close of escrow; or shall deliver the real property sales contract or trust deed to the purchaser with a written recommendation that the assignment thereof be recorded forthwith.

(d) A trust deed may be recorded in the name of the real estate broker negotiating the loan if all of the following apply: (1) the

lender or purchaser is any person or entity set forth in paragraph (1) of subdivision (c) of Section 10232, (2) the trust deed is recorded with the county recorder of the county in which the real property is located, and (3) the real property securing the loan as described in the trust deed is not a dwelling as defined in Section 10240.2 or unimproved real property.

Cause exists for discipline against Respondent Mejia and Respondent Union City Mortgage under Business and Profession Code section 10234.5, in conjunction with section 10177, subdivision (d), by reason of the matters set out in Factual Finding 13.

13. Business and Profession Code section 10234.5 states: "In addition to the requirements of Section 10234, in the placing of any loan, a broker shall deliver or cause to be delivered conformed copies of any deed of trust to both the investor or lender and the borrower within a reasonable amount of time from the date of recording.

Cause exists for discipline against Respondent Mejia and Respondent Union City Mortgage under Business and Profession Code section 10234.5, in conjunction with section 10177, subdivision (d), by reason of the matters set out in Factual Finding 13.

*Respondent Barrionuevo*

14. Business and Professions Code section 10130 sets forth:

It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a . . . real estate salesman within this state without first obtaining a real estate license from the department.

The [Real Estate Commissioner] may prefer a complaint for violation of this section before any court of competent jurisdiction, and the [Real Estate Commissioner] and his counsel, deputies or assistants may assist in presenting the law or facts at the trial. . . .

Cause exists for disciplinary action under Business and Professions Code sections 10130 and 10137, in conjunction with section 10177, subdivision (d), by reason of the matters set forth in Factual Findings 9 through 11, 14, 21, 22, and 34.

*Respondents' Irrelevant Arguments and Offers of Proof*

15. Administrative adjudication results in a decision that equates to agency action of specific application that determines a legal right or other legal interest of a

particular person.<sup>6</sup> Contrary to the arguments and presentation by respondents, administrative adjudication is not identical to nor does it exist for the purpose of civil litigation. Administrative adjudication has as its purpose the protection of the health, safety and welfare of the public.

### *Measure of Discipline*

16. The purpose of an administrative adjudication proceeding, which contemplates the revocation or suspension of a professional or occupational license, is not to punish the individual licensee. The purpose of the agency action that results from the administrative adjudication proceeding is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance, supra*, 135 Cal.App.3d 583.)

### *Doctrine of Laches*

17. Respondent Barrionuevo alluded to the doctrine of laches as a means to either gain dismissal of the Accusation, or to mitigate the penalty against his licenses and licensing rights. But, Respondent Barrionuevo offered arguments, which have little merit, in his attempt to use the equitable defense of laches.

The doctrine of laches applies in administrative proceedings when the challenged administrative action has been unreasonably delayed. Such unreasonable delay, however, must result in prejudice to the party against whom the action is taken. Because of the relationship between prejudice and delay, circumstances that give rise to laches vary widely depending upon their interplay in the case at issue. (*Hope Rehabilitation Services v. Department of Rehabilitation* (1989) 212 Cal.App.3d 938.) The doctrine is designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The policy also guards against other injuries caused by change of position during a delay. Delay alone ordinarily does not constitute laches, as lapse of time is separately embodied in statutes of limitations. What makes the delay unreasonable in the case of laches is that it results in prejudice.<sup>7</sup> (*Lam v. Bureau of Security & Investigative*

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<sup>6</sup> Government Code section 11405.50.

<sup>7</sup> See also, *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 581 [where two-year delay was not within doctrine]; *Dresser v. Board of Medical Quality Assurance* (1982) 130 Cal.App.3d 506, 511-514 [where acts 5 years and 4 years occurred before discipline initiated was not within the doctrine]; *Brown v. State Personnel Board* (1985) 166 Cal.App.3d 1156, 1159-1161 [where 4 years elapsed between the date of a professor's sexual overtures towards female students and the date the university filed charges of misconduct]; *Rudolph v. Athletic Commission* (1960) 177 Cal.App.2d 1, 21-22 [where acts occurred 14 years to 5 years before disciplinary action].

*Services* (1995) 34 Cal.App.4th 29.) If no detriment has been suffered by the party pleading laches, the plea is in vain. (*Wells Fargo v. Guerard* (1997) 53 Cal.App.4th 596, 632.)

No merit exists regarding Respondent Barrionuevo's assertion he has an entitlement to application of the equitable doctrine of laches. His motion for dismissal of the Accusation, or for an order to mitigate the penalty under a prospective order, has insubstantial support through the facts established at the hearing of this matter.

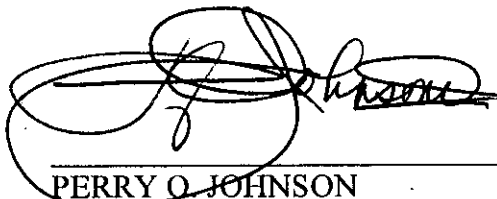
#### ORDER

1. All licenses and licensing rights of Respondent Union City Mortgage Co., Inc., are revoked.

2. All licenses and licensing rights of Respondent Pedro Pascual Mejia to act or to serve as a real estate broker under the Real Estate Law are revoked.

3. All licenses and licensing rights of Respondent Jose L. Barrionuevo to act or to serve as a real estate salesperson under the Real Estate Law are revoked.

DATED: October 26, 2007



PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings



FILED  
OCT -5 2007

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
JOSE L. BARRIONUEVO, ) No. H-9264 SF  
PEDRO PASCUAL MEJIA AND )  
UNION CITY MORTGAGE CO., )  
Respondents. )

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On June 2, 2005, an Accusation was filed in the above-entitled case.

On September 28, 2007, Respondent PEDRO PASCUAL MEJIA only petitioned the Commissioner to voluntarily surrender his real estate broker license pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent PEDRO PASCUAL MEJIA's petition for voluntary surrender of his real estate broker license is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in the Declaration executed by Respondent

///

1 PEDRO PASCUAL MEJIA on September 28, 2007 (attached as Exhibit  
2 "A" hereto).

3 Respondent PEDRO PASCUAL MEJIA's license certificate  
4 and pocket card shall be sent to the below-listed address so  
5 that they reach the Department on or before the effective date  
6 of this Order:

7 DEPARTMENT OF REAL ESTATE  
8 Attention: Licensing Flag Section  
9 P. O. Box 187000  
10 Sacramento, CA 95818-7000

11 This Order shall become effective at 12 o'clock  
12 noon on OCT 25 2007.

13 DATED: Oct. 5, 2007

14 JEFF DAVI  
15 Real Estate Commissioner

16   
17 JOHN R. LIBERATOR  
18 CHIEF DEPUTY COMMISSIONER  
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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-9264 SF
	)	
JOSE L. BARRIONUEVO,	)	
PEDRO PASCUAL MEJIA and	)	
UNION CITY MORTGAGE CO.,	)	
	)	
Respondents.	)	

DECLARATION

My name is PEDRO PASCUAL MEJIA, and I am currently licensed as a real estate broker and/or have license rights with respect to said license. I am representing myself in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Business and Professions Code), I wish to voluntarily surrender my real estate license(s) issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

///



1 I understand that by so voluntarily surrendering my  
2 license(s), I may be relicensed as a broker or as a salesperson  
3 only by petitioning for reinstatement pursuant to Section 11522  
4 of the Government Code. I also understand that by so  
5 voluntarily surrendering my license(s), I agree to the  
6 following:

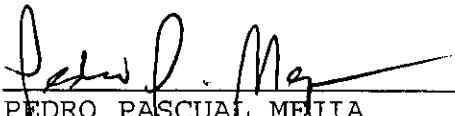
7 1. The filing of this Declaration shall be deemed as  
8 my petition for voluntary surrender.

9 2. It shall also be deemed to be an understanding  
10 and agreement by me that I waive all rights I have to require  
11 the Commissioner to prove the allegations contained in the  
12 Accusation filed in this matter at a hearing held in accordance  
13 with the provisions of the Administrative Procedure Act  
14 (Government Code Sections 11400 et seq.), and that I also waive  
15 other rights afforded to me in connection with the hearing such  
16 as the right to discovery, the right to present evidence in  
17 defense of the allegations in the Accusation and the right to  
18 cross-examine witnesses.

19 3. I further agree that upon acceptance by the  
20 Commissioner, as evidenced by an appropriate order, all  
21 affidavits and all relevant evidence obtained by the Department  
22 in this matter prior to the Commissioner's acceptance, and all  
23 allegations contained in the Accusation filed in the Department  
24 Case No. H-9264 SF, may be considered by the Department to be  
25 true and correct for the purpose of deciding whether to grant  
26 relicensure or reinstatement pursuant to Government Code Section  
27 11522.

1           4.    I freely and voluntarily surrender all my  
2 licenses and license rights under the Real Estate Law.

3           I declare under penalty of perjury under the laws of  
4 the State of California that the above is true and correct and  
5 that this declaration was executed SEPT 28, 2007, at  
6 OAKLAND, California.

7   
8 \_\_\_\_\_  
PEDRO PASCUAL MEJIA

1 DAVID B. SEALS, Counsel (SBN 69378)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0792 (Direct)

FILED  
JUN - 2 2005

DEPARTMENT OF REAL ESTATE

By *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11  
12 In the Matter of the Accusation of ) No. H-9264 SF  
13 JOSE L. BARRIONUEVO, )  
14 PEDRO PASCUAL MEJIA and ) ACCUSATION  
15 UNION CITY MORTGAGE CO., )  
16 Respondents. )

17 The Complainant, E. J. Haberer II, a Deputy Real  
18 Estate Commissioner of the State of California for cause of  
19 Accusation against JOSE L. BARRIONUEVO (hereinafter Respondent  
20 "BARRIONUEVO"), PEDRO PASCUAL MEJIA (hereinafter Respondent  
21 "MEJIA"), and UNION CITY MORTGAGE CO. (hereinafter Respondent  
22 "UNION CITY") is informed and alleges as follows:

23 FIRST CAUSE OF ACCUSATION

24 I

25 The Complainant, E. J. Haberer II, a Deputy Real  
26 Estate Commissioner of the State of California, makes this  
27 Accusation against Respondents in his official capacity.

1 II

2 Respondent MEJIA is presently licensed and/or has  
3 license rights under the Real Estate Law (Part 1 of Division 4  
4 of the California Business and Professions Code) (hereinafter  
5 "Code") as a real estate broker. At all times mentioned herein  
6 he was also the designated officer of Respondent UNION CITY.

7 III

8 Respondent UNION CITY is presently licensed and/or has  
9 license rights under the Code as a corporate real estate broker.

10 IV

11 Respondent BARRIONUEVO is presently licensed and/or  
12 has license rights under the Code as a real estate salesperson.  
13 However, Respondent BARRIONUEVO was not licensed by the  
14 Department as either a real estate broker or salesperson at any  
15 time mentioned herein prior to June 17, 2003.

16 V

17 At various times mentioned herein, Respondent UNION  
18 CITY engaged in the business of, acted in the capacity of,  
19 advertised, or assumed to act as a real estate broker within the  
20 State of California, within the meaning of Section 10131(d) of  
21 the Code by soliciting borrowers or lenders for or negotiating  
22 loans or collecting payments or performing services for  
23 borrowers or lenders or note owners in connection with loans  
24 secured directly or collaterally by liens on real property or on  
25 a business opportunity.

26 ///

27 ///

1 VI

2 That at all times mentioned herein, Respondents UNION  
3 CITY and MEJIA accepted or received funds in trust (hereinafter  
4 "trust funds") from and on behalf of their principals.

5 VII

6 Whenever reference is made in an allegation in this  
7 Accusation to an act or omission of Respondent UNION CITY, such  
8 allegation shall be deemed to mean that the officers, directors,  
9 employees, agents and real estate licensees employed by or  
10 associated with Respondent UNION CITY committed such act or  
11 omissions while engaged in furtherance of the business or  
12 operation of Respondent UNION CITY and while acting within the  
13 course and scope of their corporate authority and employment.

14 VIII

15 From on or about March 23, 2004 to May 25, 2004, two  
16 investigative audits (OK 03-0076 and OK 03-0077) were conducted  
17 by the Department of the records and bank records of Respondents  
18 MEJIA and UNION CITY, respectively, for the period from June 1,  
19 2002 to December 31, 2003, as said records related to their  
20 activities as real estate brokers.

21 IX

22 During the period covered by Audits OK 03-0076 and  
23 OK 03-0077 Respondent MEJIA employed, under his individual  
24 broker license, at least the following real estate salespersons,  
25 Emmanuel Caoile, Mehr Omar, Mohinder Singh and Marie Torres, and  
26 at the same time allowed all of them to be compensated and to

27 ///



1 perform services for which a real estate license is required for  
2 Respondent UNION CITY in violation of Section 10137 of the Code.

3 X

4 From in or about July, 2002 through August 22, 2002,  
5 Respondent BARRIONUEVO, while in the employ of Respondent MEJIA,  
6 negotiated the purchase and financing for Jose and Maricruz  
7 Mejia as buyers and borrowers on the property located at 14693  
8 Juniper Street in San Leandro (hereinafter the "Property").  
9 Respondent BARRIONUEVO was compensated for such acts for which a  
10 real estate license is required in violation of Sections 10130  
11 and 10137 of the Code.

12 XI

13 Respondent MEJIA negotiated a straight note for  
14 \$17,997.50 secured by a second deed of trust on the Property.  
15 Respondent MEJIA failed to fully disclose the note and deed of  
16 trust to Jose and Maricruz Mejia and failed to timely record the  
17 deed of trust or give them a conforming copy of the deed of  
18 trust in violation of Section 10176(i) and/or 10177(g) and  
19 Sections 10234 and 10234.5 of the Code.

20 XII

21 During the period covered by of the audits, Respondent  
22 MEJIA received trust funds via checks but failed to maintain a  
23 record of such trust funds received but not placed in a trust  
24 account in violation of Section 2831 of Title 10, California  
25 Code of Regulations (hereinafter the "Regulations").

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XIII

During the period covered by of the audits, Respondent MEJIA performed real estate activities under the name of "Re/Max Tri Valley Realty" without having filed such name with the Department or having a license issued in said name in violation of Section 10159.5 of the Code and Section 2731 of the Regulations.

XIV

During the performance of the audits, Respondent MEJIA failed provide a copy of salesperson license of 11 of his licensees for inspection by the Department in violation of Section 10160 of the Code.

XV

During the performance of the audits, Respondent MEJIA failed to adequately maintain broker-salesperson agreements with 7 of his salespersons in violation of Section 2726 of the Regulations.

XVI

At all times mentioned herein, Respondent MEJIA failed to exercise reasonable supervision over the activities of his salespersons, and permitted, ratified and/or caused the conduct described above. Respondent MEJIA failed to reasonably or adequately review, oversee, inspect and manage the salespersons under his employ, and/or to establish reasonable policies, rules, procedures and systems for such review, oversight, inspection and management.

///

1 XVII

2 The acts and/or omissions of Respondents described  
3 above are grounds for the suspension or revocation of  
4 Respondents' licenses and license rights as follows:

- 5 (1) As to Respondent MEJIA, under Sections 10137 and  
6 10176(i) and/or 10177(g) of the Code and Sections  
7 10145, 10159.5, 10160, 10234, and 10234.5 of the  
8 Code and Sections 2725, 2726, 2731, and 2831 of  
9 the Regulations in conjunction with Section  
10 10177(d) of the Code; and  
11 (2) As to Respondent BARRIONUEVO, under Section 10137  
12 of the Code and Section 10130 of the Code in  
13 conjunction with Section 10177(d) of the Code;  
14 and  
15 (3) As to Respondent UNION CITY, under Section 10137  
16 of the Code.

17 SECOND CAUSE OF ACCUSATION

18 XVIII

19 There is hereby incorporated in this second, separate  
20 and distinct, Cause of Accusation all of the allegations  
21 contained in Paragraphs I through VIII of the First Cause of  
22 Accusation with the same force and effect as if herein fully set  
23 forth.

24 XIX

25 Respondent UNION CITY failed to include their broker  
26 license number and a "... conspicuous statement on the face of the  
27 document stating that the 'good faith estimate' does not

1 constitute a loan commitment ..." on the Mortgage Loan Disclosure  
2 Statement of all borrowers during the period covered by the  
3 audits in violation of Section 10240 of the Code.

4 XX

5 At all times mentioned herein, Respondent MEJIA failed  
6 to exercise reasonable supervision over the activities of  
7 Respondent UNION CITY, and permitted, ratified and/or caused the  
8 conduct described above. Respondent MEJIA failed to reasonably  
9 or adequately review, oversee, inspect and manage the personnel  
10 and activities of Respondent UNION CITY, and/or to establish  
11 reasonable policies, rules, procedures and systems for such  
12 review, oversight, inspection and management.

13 XXI

14 The acts and/or omissions of Respondent UNION CITY  
15 described in Paragraphs XVIII and XIX above are grounds for the  
16 suspension or revocation of Respondent UNION CITY's licenses and  
17 license rights under Section 10240 of the Code in conjunction  
18 with Section 10177(d) of the Code and are grounds for the  
19 suspension or revocation of Respondent MEJIA'S license rights  
20 under Section 10177(h) of the Code and Section 2725 of the  
21 Regulations in conjunction with Section 10177(d) of the Code.

22 ///

23 ///

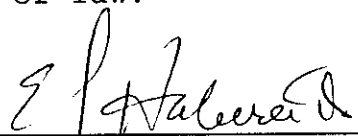
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1           WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof a decision be rendered imposing disciplinary  
4 action against all licenses and license rights of Respondents,  
5 under the Real Estate Law (Part 1 of Division 4 of the Business  
6 and Professions Code) and for such other and further relief as  
7 may be proper under other provisions of law.

8  
9   
10 E. J. HABERER II  
11 Deputy Real Estate Commissioner

12 Dated at Oakland, California,  
13 this 26 day of May, 2005.  
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